

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re Kwang-wei Han) Case No.SA CV 07-00189
 Kwang-wei Han,)
 Appellant.) **ORDER AFFIRMING THE BANKRUPTCY**
 v.) **COURT DECISIONS**
 James J. Joseph,)
 Respondent.)

Appellant Kwang-wei Han, an individual, filed a voluntary petition for bankruptcy under Chapter 7 of the Bankruptcy Code on April 14, 1997. Appellee James J. Joseph (the "Trustee") was appointed as the Chapter 7 trustee of Han's bankruptcy estate. At the commencement of the bankruptcy proceedings, Han was the trustor, trustee, and beneficiary of the Kwang-wei Han Revocable Trust (the "Han Trust"). The Han Trust was the sole owner of all shares of stock in McGaw Property Management, Inc. ("MPM"), a California corporation. Han was the sole director and officer of

cc: US Trustee's Office

1 MPM. In 1990, before Han's Chapter 7 bankruptcy filing, MPM filed
2 for bankruptcy under Chapter 11. In 1992, the bankruptcy court
3 entered an order confirming a plan of reorganization, and leaving
4 Han as a debtor-in-possession.¹ MPM's bankruptcy estate is
5 separate from Han's Chapter 7 bankruptcy estate and the orders at
6 issue on this appeal. Before MPM was dissolved, its primary asset
7 was title to commercial property located in Irvine, California (the
8 "McGaw Property").

9 On October 20, 1997, the Trustee filed a motion requesting
10 authorization to (1) revoke the Han Trust and (2) use the property
11 of Han's bankruptcy estate outside the ordinary course of business.
12 (See Ex. 29 at 1669.) After receiving briefing and holding a
13 hearing, the bankruptcy court entered an order on March 25, 1998,
14 granting the Trustee's motion to revoke the Han Trust and use the
15 property of Han's bankruptcy estate ("1998 Trust Revocation & Use
16 of Assets Order"), including its 100% shareholder interest in MPM.
17 (See Ex. 29 at 1666.) Han appealed this order to the Bankruptcy
18 Appellate Panel for the Ninth Circuit ("BAP"), but the appeal was
19 ultimately dismissed for lack of prosecution on August 12, 1998.
20 (See Ex. 29 at 1760.) Nevertheless, Han has repeatedly contested
21 the validity of the 1998 Trust Revocation & Use of Assets Order,
22 including on the instant consolidated appeal.

23 Presently, Han appeals three distinct bankruptcy court orders
24 from the Chapter 7, one from 2007 and two from 2008. At Han and
25 Appellee's request, these appeals were consolidated.

26 A. Appeal of January 29, 2007 Order: CV 07-00189 DDP

27 _____
28 ¹ In 1999, MPM's Chapter 11 bankruptcy case was ordered
dismissed.

1 On October 4, 2006, the Trustee filed a motion seeking
2 authorization to use the bankruptcy estate's 100% shareholder
3 interest in MPM to sell the McGaw Property and to dissolve MPM.
4 (See Ex. 1.) On November 17, 2006, the court entered an order
5 granting the Trustee's motion. (See Exs. 7, 57.) Han then filed a
6 motion for relief from this order. (Ex. 8.) The bankruptcy court
7 denied Han's motion on January 29, 2007. (Ex. 14.)

8 The January 29, 2007 order denying relief is the basis of
9 Appellants' first appeal.

10 B. Appeal of First January 8, 2008 Order: CV 08-00075 DDP

11 On May 30, 2007, the Trustee filed an interim application for
12 his fees ("Interim Fee Application"). (See Ex. 20, 21.) After
13 several rounds of supplemental briefing, the bankruptcy court
14 issued an order granting the Trustee's Interim Fee Application on
15 October 4, 2007. (Ex. 40.) Han then filed a motion to amend this
16 order (Ex. 45), as well as an amended application to amend the
17 October 4, 2007 Order (Ex. 52).

18 On January 8, 2008, the bankruptcy court entered an order (1)
19 denying Han's motion to amend the October 4, 2007 order and (2)
20 sustaining the Trustee's evidentiary objections to evidence
21 supplied by Han on the motion. (Exs. 55, 61.)

22 The (first) January 8, 2008 order is the subject of Han's
23 second appeal.

24 C. Appeal of Second January 8, 2008 Order: CV 08-00282 DDP

25 On September 27, 2007, the Trustee filed (1) an application
26 for compensation by the Trustee's counsel, (2) a second application
27 for the Trustee's accountants' fees, and (3) a motion authorizing a
28 final distribution to the creditors of Han's bankruptcy estate.

1 (See Exs. 34, 36, 38.) After a hearing, the bankruptcy court
2 entered two orders (1) granting the creditor distribution, and (2)
3 granting the applications for attorneys' fees and compensation to
4 the Trustee's accountants (Exs. 48, 49). On November 13, 2007, Han
5 filed a Motion to Amend the October 31, 2007 Orders. (See Ex. 51.)
6 On January 8, 2008, the bankruptcy court entered an order denying
7 Han's motion to amend. (Ex. 56.)

8 The (second) January 8, 2008 order is the subject of Han's
9 third appeal.

10 **II. LEGAL STANDARD**

11 Under 28 U.S.C. § 158(a), federal district courts have
12 jurisdiction to review appeals from final orders and judgments of
13 bankruptcy courts. In general, the bankruptcy court's conclusions
14 of law are reviewed de novo, while its findings of fact are
15 reviewed for clear error. Salazar v. McDonald (In re Salazar), 430
16 F.3d 992, 994 (9th Cir. 2005); Fed. R. Bankr. P. 8013. In
17 addition, a bankruptcy court's denial of a motion for
18 reconsideration is reviewed under an abuse of discretion standard.
19 Weiner v. Perry, Settles & Lawson (In re Weiner), 161 F.3d 1216,
20 1218 (9th Cir. 1998).

21 **III. DISCUSSION**

22 **A. 1998 Trust Revocation & Use of Assets Order**

23 Almost all of Appellant's arguments address the 1998 Trust
24 Revocation & Use of Assets Order. However, the bankruptcy court's
25 March 25, 1998 order is not reviewable on this appeal. The order
26 was issued over 10 years ago, and an appeal must be taken within 10
27 days of the final order of the bankruptcy court. Fed. R. Bank. P.
28 8002(a). This time limit is jurisdictional on appeal. In re

1 Slimick, 928 F.2d 304, 307 (9th Cir. 1990). Furthermore, Han has
2 already appealed this order to the BAP, where the appeal was
3 dismissed for failure to prosecute.

4 Therefore, Han's attempt to appeal this order through the
5 present consolidated appeals is untimely, and this Court does not
6 have jurisdiction to hear it.

7 B. 2007 Order Denying Relief from Dissolution & Sale

8 On November 17, 2006, the bankruptcy court issued an order
9 that authorized the Trustee to use Han's Chapter 7 bankruptcy
10 estate's shareholder interest in MPM to sell the McGaw Property and
11 to dissolve MPM. (Exs. 14, 57.) On January 29, 2007, the
12 bankruptcy court issued an order deny Han's motion for relief from
13 the November 17, 2006 order, which Han appealed.

14 Han's motion for reconsideration was made pursuant to
15 Bankruptcy Rule 9024, which applies Federal Rule of Civil Procedure
16 60 in bankruptcy cases. See Fed. R. Bankr. P. 9024; Zurich Am.
17 Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.), 503
18 F.3d 933, 940 (9th Cir. 2007). Han argued that the November 17,
19 2006 order was invalid due to fraud under Rule 60(b)(3) and under
20 (b)(6) for "other reasons justifying relief." (See Ex. 8 at 327.)
21 In the hearing where the bankruptcy court explained the reasoning
22 behind its order, the court first noted its difficulty in
23 understanding Han's arguments, including the arguments Han made at
24 the hearing. It then determined that Han had presented two
25 arguments for reconsideration: (1) that the bankruptcy court
26 lacked jurisdiction, and (2) that the bankruptcy estate had
27 mismanaged a \$2,000,000 loan taken out on the McGaw Property. (Ex.
28 58 at 2833.) The bankruptcy court found neither argument caused it

1 to reconsider its order. On the first issue, the court determined
2 that there had been no withdrawal of reference to the case by the
3 district court, and therefore that the bankruptcy court's
4 jurisdiction was undisturbed. (Id.) The court next found that the
5 \$2,000,000 loan was not at issue in the underlying November 17,
6 2006 order authorizing sale of the McGaw Property and dissolution
7 of MPM, and therefore was not proper grounds for reconsideration.
8 (Id.)

9 On appeal, Han does not address either of these findings, and
10 instead argues that the denial of relief was incorrect because the
11 March 25, 1998 order revoking the Han Trust and permitting use of
12 its assets (and, specifically, sole ownership of all MPM shares)
13 was invalid. Consequently, according to Han, the Trustee did not
14 have "standing" to sell the McGaw Property or dissolve MPM.

15 This argument fails for two reasons. First, Han is attempting
16 to appeal the March 25, 1998 order, which this Court does not have
17 jurisdiction to hear. Second, the record supports the bankruptcy
18 court's decision to deny Han's motion for reconsideration. Han
19 provided no evidence of jurisdictional defect, fraud by any party,
20 or any other argument or evidence upon which the bankruptcy court
21 could reverse its decision of November 17, 2006. Han provided no
22 evidence that the bankruptcy court's jurisdiction had been removed,
23 such as by a withdrawal of reference, and does not dispute that
24 MPM's management of its loans were never raised by the parties in
25 the Trustee's original motion to sell the McGaw Property and
26 dissolve MPM.

27 Therefore, the bankruptcy court's denial of Han's motion on
28 January 29, 2007 did not constitute an abuse of discretion.

C. 2008 Orders Denying Han's Motions for Amendment and Reconsideration

The bankruptcy court jointly considered Han's motions for amendment and reconsideration in a hearing on December 18, 2007. The subject of these motions was reconsideration or amendment of the court's orders granting the Trustee's fee applications and final creditor disbursement. (See Exs. 45, 51, 52.) All of Han's motions to amend and reconsider were made pursuant to Bankruptcy Rule 9023, which incorporates Federal Rule of Civil Procedure 59. Fed. R. Bankr. P. 9023; In re Int'l Fibercom, Inc., 503 F.3d at 946. On his motions, Han argued that (1) the Trustee of his Chapter 7 estate had violated the "single estate rule" and (2) the Trustee lacked standing to receive fees, again based on the invalidity of the 1998 Trust Revocation & Use of Assets Order. In responding to these arguments, the bankruptcy court noted that reconsideration is only appropriate if the court is (1) presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law. See Sch. Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). The bankruptcy court first found that there was no newly discovered evidence, despite a declaration submitted by Han of an attorney who stated a legal opinion supporting Han, as this constituted argument rather than new evidence. The court next determined that the single estate rule did not apply, because there were two separate bankruptcy debtors - Han (under Chapter 7) and MPM (under Chapter 11). Finally, the bankruptcy court responded to Han's argument

1 that the Trustee lacked standing, due to the invalidity of the 1998
2 Trust Revocation & Use of Assets Order. Han had argued that the
3 Han Trust's shareholder interest in MPM was actually part of MPM's
4 bankruptcy estate, and was protected from any use by the Chapter 11
5 automatic stay injunction. See 11 U.S.C. § 541(a)(1) (the debtor's
6 bankruptcy estate "is comprised of . . . all legal or equitable
7 interests of the debtor in property as of the commencement of the
8 case."). The bankruptcy court stated that this issue had been
9 previously adjudicated, was a final order, and could not be
10 revisited.² (See Ex. 62 at 2986-991.)

11 Han's arguments on appeal of this order are the same as those
12 described above - that the March 25, 1998 order revoking the Han
13 Trust and permitting use its assets was invalid and that,
14 consequently, the Trustee did not have "standing." Again, this
15 argument fails for two reasons. First, Han is attempting to appeal
16 the March 25, 1998 order, which this Court does not have
17 jurisdiction to hear. Second, the record supports the bankruptcy
18 court's decision to deny Han's motion for amendment or
19 reconsideration. Han's main argument, that there were simultaneous
20 estates with one debtor, does not apply because the two estates at
21 issue were distinct - Han's and MPM's. See, e.g., In re Grimes,
22 117 B.R. 531, 534 (B.A.P. 9th Cir. 1990)(discussing the
23 applicability of the single estate rule). Han pointed to no other
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25 ² The bankruptcy court also found that, upon examination of
26 the MPM reorganization plan, Han's argument was incorrect.
27 Ownership of the MPM shares were not a part of MPM's Chapter 11
28 bankruptcy, because MPM did not own its own shares; and instead the
Han Trust owned them. Therefore, these assets were not protected
by the automatic stay or included in MPM's Chapter 11 bankruptcy
estate.

1 new evidence or errors of law in support of his motions to amend or
2 for reconsideration, other than general and unsupported allegations
3 of fraud and mismanagement of MPM by the Trustee.

4 Therefore, the bankruptcy court's denial of Han's motions on
5 October 15 and December 4, 2007 did not constitute an abuse of
6 discretion.

7 **IV. CONCLUSION**

8 For the foregoing reasons, the orders of the bankruptcy court
9 are AFFIRMED.

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11 IT IS SO ORDERED.

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14 Dated: September 29, 2009



15 DEAN D. PREGERSON

16 United States District Judge
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